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CHAIRMAN

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RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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WASHINGTON, DC 20515–6301

(202) 225–6371
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June 8, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

The Committee on Science, Space, and Technology is conducting oversight of the U.S. Environmental Protection Agency's (EPA) role regarding hospital disinfectants, sterilants, and antimicrobial devices. In particular, we are concerned about a recent investigation initiated by the EPA Office of Inspector General exploring whether EPA's antimicrobial testing program may be putting patients, hospital staff, and administrators at risk.[1] In addition, the Committee has learned recently that the agency may be ignoring well-documented cases of false and misleading advertising by companies in the mercury ultraviolet device industry; this advertising includes false claims of EPA endorsement and inappropriate use of federal agency logos. The Committee is concerned that EPA is diverting resources toward agency-contrived marketing concepts that promote certain products as "safer" than others and away from oversight of product efficacy.

Health care professionals and patients rely on EPA to ensure that the surface disinfection tools they choose are safe, effective, and truthful in their claims. Under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), EPA is responsible for ensuring that these products meet federal standards to save lives.[2] EPA should judiciously use its resources to protect public health and safety, without committing resources toward unauthorized and discretionary marketing initiatives. For example, EPA's Safer Choice program appears to instill a false sense of approval or endorsement for select products leading to confusion in the marketplace and the potential for misleading claims by businesses. It appears that some companies claim their

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[1] *See* EPA, Office of Inspector General, *Notification: Evaluation of the Antimicrobial Testing Program*, Aug. 26, 2015, *available at* https://www.epa.gov/office-inspector-general/notification-evaluation-antimicrobial-testing-program.

[2] See 7 U.S.C. § 136(mm)(1)(a). While this oversight function is shared with the Food and Drug Administration with respect to certain products and uses, we are focused on products regulated by EPA.

products are endorsed by EPA, when in fact, the agency has not made such a conclusion. It is the Committee's understanding that EPA has taken no action to clarify or rebut these claims.

To assist the Committee's efforts to ensure adherence to the sound objective process in agency obligations under FIFRA and that EPA is fulfilling responsibilities mandated by Congress, please produce the following documents in electronic format:

1. All documents and communications between or among EPA employees referring or relating to enforcement efforts with respect to false and misleading claims of government endorsement of products approved under FIFRA.

2. A complete accounting of all funds spent on EPA's Safer Choice Antimicrobials Initiative from 2014-present.

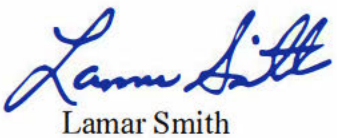
3. All documents and communications between or among EPA employees referring or relating to efficacy testing of hospital antimicrobial chemical products.

The Committee requests that you provide the requested documents and information, in electronic format, as soon as possible, but no later than 5:00 p.m. on June 22, 2016. An attachment to this letter provides details on producing documents to the Committee. In addition, please provide a briefing by June 24, 2016, for Committee staff that includes information on EPA's oversight of hospital disinfectants, sterilants, and antimicrobial devices as well as any procedures EPA has in place to monitor and address claims of agency endorsement, use of agency logos, or other inappropriate marketing techniques by companies and other organizations.

The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

If you have any questions about this request, please contact Joseph Brazauskas or Richard Yamada of the Science, Space, and Technology Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member, House Committee on Science, Space and Technology

Enclosure

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents, in unredacted form, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), or PDF files.

   (b) Document numbers in the load file should match document Bates numbers and TIF or PDF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. In complying with this request, be apprised that the U.S. House of Representatives and the Committee on Science, Space, and Technology do not recognize: any of the purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.

14. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

15. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

16. Unless otherwise specified, the time period covered by this request is from October 1, 2015, to the present.

17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

18. All documents shall be Bates-stamped sequentially and produced sequentially.

19. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 324 of the Ford House Office Building.

20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive

documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.